13

FILED
JUN 1 1953
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. 660

VICTRYLITE CANDLE CO., A WISCONSIN CORPORATION,
Petitioner,

vs.

CHARLES F. BRANNAN, SECRETARY OF AGRICULTURE, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

REPLY TO MEMORANDUM OF THE UNITED STATES IN OPPOSITION.

EDWARD BRODKEY,
ALBERT BRICK,
FRANK E. GETTLEMAN,
ARTHUR GETTLEMAN,
10 S. La Salle Street,
Chicago 3, Illinois,
Attorneys for Petitioner.

May 28, 1953.

THE SUNTHORP-WARREN PRINTING COMPANY, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. 660.

VICTRYLITE CANDLE CO., A WISCONSIN CORPORATION,
Petitioner,

vs.

CHARLES F. BRANNAN, SECRETARY OF AGRICULTURE, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

REPLY TO MEMORANDUM OF THE UNITED STATES IN OPPOSITION.

The suggestion of the Acting Solicitor General on page 3 of his Memorandum in Opposition to the petition for a writ of certiorari herein that

> "* * * no additional libels against petitioner's product will be instituted unless and until that decision is reversed. Petitioner is thus plainly in no present danger of the irreparable injury alleged, and for that reason alone would not be entitled to either a temporary or a permanent injunction"

completely ignores the fact that petitioner, in addition to being deprived of the seized product and saddled with the

expense of litigation, is being irreparably injured by the maintenance of the *status quo* alone, under which its business and good will is being continually destroyed by the refusal of its customers to deal in its products, one of which, Moskeeto-Lites, has heretofore been seized for an alleged violation of the law. This Court has recognized the irreparable injury to business inherent in seizure, threat of seizure and statutory penalty. *Youngstown Sheet & Tube Co., et al.* v. *Sawyer*, 343 U. S. 579, 585; *Hynes* v. *Grimes Packing Co.*, 337 U. S. 86, 97-99; *Miller* v. *Standard Nut Margarine Co.*, 284 U. S. 498, 510. Irreparable injury may exist without regard to the possibility of a renewed illegal or unconstitutional act by a defendant in cases where the act sought to be enjoined and the injury complained of is, as here, a continuing one. An injunction is required to assure petitioner's customers that they may sell its products without fear of seizure. And with respect to any promise of libelant to abandon further seizures *pendente lite*, this Court is respectfully reminded that in *United States* v. *Oregon Medical Society*, 343 U. S. 326, 333, it said:

> "When defendants are shown to have settled into a continuing practice * * *, courts will not assume that it has been abandoned without clear proof. *Local 167* v. *United States*, 291 U. S. 293, 298. *It is the duty of the courts to beware of efforts to defeat injunctive relief by protestations of repentance and reform, especially when abandonment seems timed to anticipate suit, and there is probability of resumption.* Cf. *United States* v. *United States Steel Corp.*, 251 U. S. 417, 445." [Emphasis supplied.]

Further, the case of *Ewing* v. *Mytinger & Casselberry*, 339 U. S. 594, relied on by the Government here, is not controlling. It arose under a statute materially different from that applicable to the case at bar. Petitioner believes that there has been not only an abuse of discretion by the

trial court in denying petitioner injunctive relief against "multiple seizure", but that there is no question of discretion involved since (1) the Statute does not authorize multiple seizures and (2) if it did, it would be unconstitutional under the facts of this case.

In view of the fact that the Government has advised this Court that, since the filing of the petition herein, it lost its case on a trial of the product on its merits in one of the libels pending in the Northern District of Illinois, wherein the District Court decided that Moskeeto-Lites were not misbranded and dismissed the libel, from which the Government has appealed,* this Court may deem it appropriate to presume that the equities herein are with petitioner and to grant the writ.

EDWARD BRODKEY,
ALBERT BRICK,
FRANK E. GETTLEMAN,
ARTHUR GETTLEMAN,
Attorneys for Petitioner.

May 28, 1953.

* Both the District Court for the Northern District of Illinois, Eastern Division, and the Court of Appeals for the Seventh Circuit have since denied the Government stays in these proceedings.